IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 58 OF 2004.

Mrs. Usha P. Kamat nee
Usha R. Pai, Assistant
Teacher, 'Shri Kamaleshwar
High School', Deulwada,
Korgaon, Pernem. ... Petitioner.

Versus

1. State of Goa through
   The Secretary (Education),
   Government of Goa,
   Secretariat, Panaji.
2. The Director of Education,
   Government of Goa,
   St. Inez, Panaji.
3. The Deputy Director of
   Education (Acad.), Government
   of Goa, St. Inez, Panaji.
4. The Chairman,
   Shri Kamaleshwar Shikshan
   Prasarak Saunstha, Korgaon, Pernem.
5. The Headmaster, Shri Kamaleshwar
   High School, Korgaon, Pernem. ... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S.S. Naik,
Advocate for the Petitioner.

Mr. S.R. Rivonkar, Government Advocate for the
Respondents 1 to 3.

Mr. M.S. Sonak, Advocate for the Respondents 4 and 5.

Coram : P.V. HARDAS AND
D.G. KARNIK, JJ.

Date : 21st April 2004.

ORAL JUDGMENT (PER HARDAS, J.)

The filing of this petition is on account of a very piquant and distressing situation, at least for the petitioner, when, after a period of nearly 25 years, recovery is sought to be ordered in respect of the graduate scale given to the petitioner some where in the year 1975 with effect from 2nd June 1974. The

petitioner has, therefore, prayed in this petition for a writ of certiorari or an appropriate writ quashing the "audit objection" raised in the Audit Report, dated 8th January 1999 and in the communication, dated 7th October 2003, issued by the third respondent, that is, the Deputy Director of Education, addressed to the Manager of the respondent no. 4 Society, for implementation of the audit objection.

2. With the consent of the learned counsel for the parties, this petition is being taken up for final hearing at the stage of admission. Hence, Rule to issue, made returnable forthwith.

3. The facts as are necessary for the decision of this petition are stated hereunder:-

The petitioner was appointed as an undergraduate teacher in the School run by the respondent no. 4 Society in the year 1970. While in service, the petitioner appeared for the 'Hindi Sahitya Visharad' examination conducted by the Hindi Sahitya Sammelen Prayag, which is accepted as a graduate examination by the Directorate of Education. The result of the examination was declared on 2nd June 1974 and the petitioner was declared successful in the said examination. Consequent on the petitioner being

declared successful in the examination, by an Order, dated 10th November 1975, the petitioner was placed in the graduate scale with effect from 2nd June 1974. Undisputedly, the payment of salaries of the teachers of the school, in which the petitioner was employed, is paid by the Government from the Grant-in-Aid. Consequent upon the petitioner being placed in the graduate scale, the difference in the salary was paid by the Directorate of Education from out of the salary grant. Apparently the petitioner continued the benefit of the graduate scale and despite the audits being conducted regularly, at no point of time was any objection raised either by the Auditors or by the Directorate of Education that the petitioner had been wrongly/unauthorisedly placed in the graduate scale with effect from 2nd June 1974. It appears that for the first time an objection was taken by the Auditors and the objection was that the petitioner was appointed on 4th December 1970 as an untrained Assistant Teacher and was upgraded with retrospective effect from 2nd June 1974 instead of 16th November 1976, which, according to the Auditors, was not proper. This objection was raised for the first time on 8th January 1999. The Director of Education communicated the objection to the Management, that is, the respondent no. 4 and directed the Management to comply with the audit objection. Consequent upon the receipt of the audit objection, the

Management began the process of recovery of the excess amount paid to the petitioner as pointed out by the Auditors. The petitioner in this petition, therefore, questions the legality or correctness of the audit objection, which was taken after a lapse of 25 years.

4. Mr. Lotlikar, learned counsel appearing for the petitioner, has urged before us that, at the relevant time, the Grant-in-Aid Code for Secondary Schools, Colleges and other Educational Institutions, except the Primary Schools was in force. There is no provision in the Grant-in-Aid Code which required the Management to seek the prior approval of either the Director of Education or the Deputy Director of Education while placing a teacher in the graduate scale. Therefore, according to him, the audit objection, that too, after 25 years is unsustainable on facts and is being used as a lever or foundation for recovering the excess salary paid to the teacher.

5. Mr. Rivonkar, the learned Government Advocate appearing for the respondents 1 to 3, has, on the basis of the affidavit filed by the Director of Education, urged before us that it was incumbent on the Management, before granting the graduate scale to the petitioner with retrospective effect, to have obtained prior approval of the Director of Education. In fact, it was

submitted before us that there is nothing illegal in granting the graduate scale to the petitioner except that it has been granted retrospectively and without prior approval. The learned Government Advocate appearing on behalf of respondents 1 to 3 was, therefore, asked to point out the provision which required the Management to obtain prior approval for retrospectively granting the graduate scale. The learned Government Advocate for the respondents 1 to 3 very fairly conceded that under the Grant-in-Aid Code there is no such provision. The learned Government Advocate, however, laid great stress on the Circular, issued by the Government of Goa, dated 24th April 1979. In the said Circular, according to the learned Government Advocate for the respondents 1 to 3, whenever Managements of schools propose to make appointment against vacancies in the sanctioned strength of the school against the newly created posts or those arising following discharge/resignation tendered by any teacher or short term vacancies on account of sanction of leave, suspension, deputation on training, etc., prior approval of the Department should be taken before appointment is made against any such vacancies. It is then sought to be urged, very ingenously before us that the fact that the Government issued such a Circular itself contemplates that there is a provision which required the Management to obtain the prior approval. The

submission in this behalf is totally devoid of substance. Firstly, the Circular is issued in the year 1979 while the petitioner was placed in th graduate scale in the year 1975, no doubt, with retrospective effect from 2nd June 1974. This Circular, therefore, has absolutely no application to the placement of the petitioner in the graduate scale and nor can it be used in its effect to urge before us that prior approval was necessary. In fact, the perusal of the opening paragraph of the Circular reveals that such appointments were made earlier and, therefore, in order to ensure that the Government is not unnecessarily burdened with finances the Directorate of Education thought it fit to direct the Managements of schools to obtain prior permission. This negates the very submission which is sought to be advanced on behalf of respondent no. 2.

6. The learned counsel for respondent no. 2 then invited our attention to The Goa School Education Rules, 1986. A reference is made to Rules 74 and 76 which, according to the learned counsel for the respondent no. 2, lays down the procedure in respect of appointment of teachers and contemplates that the Management should obtain prior approval. Again this submission is wholly unfounded and though it does not arise for consideration in this petition, we may state that the Rule states that the Managing Committee shall make an initial appointment

of the teacher and then seek the approval of the Director of Education.

7. Mr. Sonak, the learned counsel appearing on behalf of the respondents 4 and 5, has submitted that there was no provision under the Grant-in-Aid Code which required the Management to obtain prior permission/approval from the Director of Education for placement of a teacher in the graduate scale. It is also pointed out by Mr. Sonak, the learned counsel appearing on behalf of respondents 4 and 5 that the petitioner was paid the differences in the salary on account of the placement of the petitioner in graduate scale by the Directorate of Education itself and at no point of time was any objection raised by the Director of Education for the placement of the petitioner in the graduate scale with effect from 2nd June 1974. It is also brought to our notice that audits have regularly been conducted and no objection of this nature was ever raised. The stand of the respondent no. 2, which is reflected in the affidavit, is that the placement of the petitioner in the graduate scale with retrospective effect from 2nd June 1974 is not legal on account of the fact that the Management had not sought prior approval. Beyond this, nothing has been pointed out in the affidavit which renders the placement of the petitioner in the graduate scale as either illegal or contrary to

any norms laid down by the Department of Education.

As pointed out earlier, the learned counsel appearing for the Director of Education has not been able to point out to us any Rule which required the Management to obtain prior approval for placement of the petitioner in graduate scale. By their conduct in paying the salary grants of the petitioner, for the last nearly 25 years, is a pointer that the Department had granted approval, if at all it was necessary. It is unfortunate that an issue of this nature is raked up, by the Department, after nearly 25 years, out of the blue. The petitioner has been festooned with a liability of paying back the arrears of pay, which she has, according to the Department, unauthorisedly received. It is virtually at the whim of the Director of Education that such an objection has been raised. According to us, there is no foundation for such objection. We are conscious that to repeat is not to augment, however, we say that the respondent no. 2 has not been able to point out any Rule requiring the Management to obtain prior approval for placement of a teacher in graduate scale.

8. In view of what has been stated by us above, according to us, the audit objection raised in respect of placement of the petitioner in the graduate scale

with effect from 2nd June 1974 is wholly without any basis and consequently the petition will have to be allowed. Accordingly, Rule is made absolute in terms of prayer Clauses (i) and (ii) of the petition, with costs, which we quantify at Rs. 5,000/- payable by the Directorate of Education.

(P.V. HARDAS)
JUDGE.

(D.G. KARNIK)
JUDGE.

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